

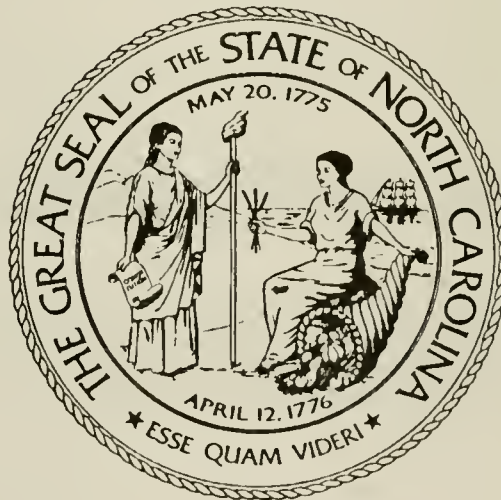




**LEGISLATIVE  
RESEARCH COMMISSION**

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**DISADVANTAGED BUSINESS CONTRACTS,  
AND STATE CONTRACTS WITH SMALL  
BUSINESSES**



**REPORT TO THE  
1989 GENERAL ASSEMBLY  
OF NORTH CAROLINA  
1989 SESSION**

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LEGISLATIVE RESEARCH COMMISSION  
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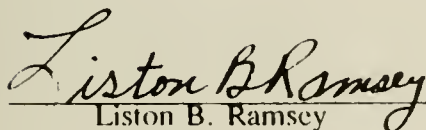


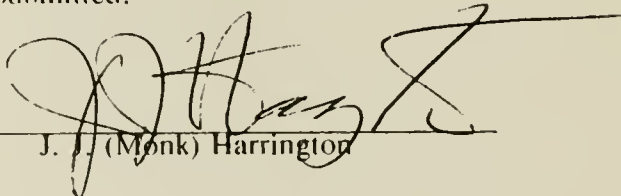
December 14, 1988

TO THE MEMBERS OF THE 1989 GENERAL ASSEMBLY:

The Legislative Research Commission herewith submits to you for your consideration its final report on Disadvantaged Business Contracts Financed by State Funds. The report was prepared by the Legislative Research Commission's Committee on Disadvantaged Business Contracts Financed by State Funds pursuant to Part II, Section 2.1 (32) of Chapter 873 of the 1987 Session Laws.

Respectfully submitted,

  
Liston B. Ramsey

  
J. J. (Monk) Harrington

Cochairmen  
Legislative Research Commission





1987-1988

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## PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is a general purpose study group. The Commission is co-chaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

At the direction of the 1987 General Assembly, the Legislative Research Commission has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The Co-chairs of the Legislative Research Commission, under the authority of G.S. 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Co-chairs, one from each house of the General Assembly, were designated for each committee.

The study of Disadvantaged Business Contracts was authorized by Part II, Section 2.1(32) of Chapter 873 of the 1987 Session Laws (1987 Session). That act states that the Commission may consider House Bills 2130 and 2131 in determining the nature, scope and aspects of the study. Section 1 of House Bill 2130 reads in part: "The Legislative Research Commission is authorized to recommend a comprehensive policy for North Carolina and its political subdivisions to promote the maximum opportunity for participation by disadvantaged business enterprises in the performance of contracts financed in whole or in part with state funds." Section 1 of House Bill 2131 reads in part: "The Legislative Research Commission is authorized to study the issue of State

contracts with small businesses owned by minorities, disabled persons, and women.” The relevant portions of Chapter 873 and House Bills 2130 and 2131 are included in Appendix C. The Legislative Research Commission grouped this study in its Buildings and Disadvantaged Businesses area under the direction of Representative John T. Church. The Committee was chaired by Senator Mary Seymour and Representative Howard Barnhill. The full membership of the Committee is listed in Appendix A of this report. A committee notebook containing the committee minutes and all information presented to the committee is filed in the Legislative Library.

## COMMITTEE PROCEEDINGS

The Committee on Disadvantaged Business Contracts Financed by State Funds met five times. Three meetings were held before the 1988 Legislative Short Session, and two meetings were held after that Session.

### FIRST MEETING

The first meeting of the Committee on January 26, 1988 was spent reviewing the legislation that created the committee, legislation passed during the 1987 Session concerned with encouraging disadvantaged business participation in State contracts, and other programs or policies in State government agencies for minorities and disadvantaged businesses.

The committee members discussed House Bills 2130 and 2131 which created the Study Committee and set out the purpose and challenge of the Committee. House Bills 2130 and 2131 charged the Committee with doing the following: (1) report on existing programs and policies in all State government agencies, and existing policies without programs for minorities, and disadvantaged businesses, (2) survey the amount of goods and services the State is currently acquiring from disadvantaged businesses, i.e., minority, women, and disabled owned business enterprises (hereinafter, "MBE, WBE, and DBE"), (3) analyze what is being done to assist these businesses in getting State contracts, (4) recommend what the State should be doing to assist these businesses in doing business with the State, and (5) recommend a comprehensive policy for North Carolina to promote participation by disadvantaged business in performance of State contracts.

At the first meeting, the Committee also received information on "A Program to Encourage Business Enterprises Owned By Minority, Women, and Disabled Persons," established by House Bill 1514, Section 52, which charged the Purchase and Contract office of the Department of Administration with doing the following: (1) identify disadvantaged businesses that could do business with the State; (2) provide pre- and post-bid information and assistance to disadvantaged businesses; (3) publish and distribute to State purchasers a directory of disadvantaged businesses; (4) monitor and record the use of disadvantaged businesses by the State; (5) encourage State agencies, and local governments using services of Department of Administration in purchase of materials, to purchase a minimum of 4% from disadvantaged businesses; and (6) report to the Department of Administration the percentage of purchases from disadvantaged businesses in March of 1988. The State agencies that do not use the services of the Department of Administration in purchasing materials are the Office of State Construction, The Office of State Property, and the Department of Transportation. These agencies conduct their own

purchasing and were not subject to the reporting requirement of House Bill 1514. (House Bill 1514 is attached as Appendix D).

Representatives from the Office of Purchase and Contract appeared at the first meeting and explained how their office operated the Program to Encourage Participation by Minority, Women and Disabled Business Enterprises, and expressed ideas regarding major problems faced by disadvantaged business owners when attempting to do business with the State. Mr. Drew Harbinson, Assistant to the State Purchasing Officer, said that from the procurement point of view there were problems of identification of disadvantaged businesses; from the vendor's point of view, understanding how the system works was a major problem.

The Office of Purchase and Contract has published a North Carolina Special Interest Directory which lists vendors and the type of commodity that the vendor can provide.

Mr. Lewis Myers, Assistant Secretary of Commerce for Small Business Development, also spoke at the first meeting of the Committee. He stated that his agency certifies the firms which desire to be identified as a minority, women or disabled owned business. Mr. Myers said that there are approximately 350 businesses certified in all three categories.

## SECOND MEETING

At the second meeting of the Committee on March 22, 1988, the Committee received information regarding: the commodity areas with no minority vendors; what type of program the North Carolina Department of Transportation had to encourage business with disadvantaged businesses; which local governments had goals or set aside programs for minority and women businesses (M/WBEs); how the N.C. Association of General Contractors felt about a State goals or set aside program; what the Rural Economic Development Center was striving to do for small businesses in rural areas of the State; and what other states were doing in terms of goals and set-aside programs.

Mr. Drew Harbinson from the Office of Purchase and Contract returned to the second committee meeting and reported on the number of commodity areas without minority vendors. Out of approximately 22,000 commodities purchased by the State, there were 222 commodity class listings. Of those 222 class listings, there were 18 commodity classes where no minority vendors were available.

Representatives from the North Carolina Department of Transportation also made presentations at the second meeting regarding any goals or set-aside programs its office had. Mr. Walter Brown, from the Civil Rights Section, reported that his office was working to keep up with a 10% goal for MBE and WBE participation in federally assisted programs such as the goals required by the Federal Surface Transportation and Uniform Relocation Assistance Act. Mr. Bill Benton, from the Purchasing Section of the Department of Transportation, said that this section was keeping track of the amount of purchases made from disadvantaged businesses pursuant to Executive Order



No. 34, and was exceeding the 4% goals set. (Executive Order No. 34 is attached as Appendix E).

The Committee heard from representatives of local governments which have goals or set aside programs for MBEs and WBEs. The local government representatives who made comments were from the City of Durham, the City of Charlotte, Mecklenburg County, New Hanover County, and the City of Raleigh. Overall, most of the representatives reported that their goals and/or set aside programs were going well. One speaker from the City of Charlotte stated that from her experience as a MBE/WBE Director, speculation that bid activity would decrease, contract costs would increase, and subcontracts could not be negotiated prior to bid date was without merit. In fact, she saw an increase in MBE/WBE interest and willingness to provide quotes.

Mr. Henry Clegg, Director of the Highway Heavy Division of the North Carolina Association of General Contractors, gave comments at the March meeting. He said that his association adopted a formal MBE/WBE policy in 1982 which aimed to assist MBE/WBEs to become competitive in the construction industry. His association, however, does not support any type of program for MBE/WBEs that would defeat the State's competitive bid system.

Mr. Rick Carlyle, Assistant Director of the Rural Economic Development Center, also made comments at the second meeting. Mr. Carlyle said that the Rural Economic Development Center --one of the recommendations of the Lt. Governor's Commission on Jobs and Economic Growth--serves as an advocate and source of information for rural areas, provides information on the impact of policies on rural areas, and develops policy agendas for rural North Carolina.

### **THIRD MEETING**

At the third meeting of the Committee on April 26, 1988, the Committee heard minority and women business owners' personal experiences regarding doing or trying to do business with the State, how State agencies are meeting or exceeding the M/W/DBE goals under House Bill 1514, and what is being done to aid women in doing more business with the State.

Mr. Drew Harbinson, from the Office of Purchase and Contract, reported on the results of House Bill 1514, which mandated: "All participating entities required to use the services of the Department of Administration in the purchase of materials, supplies, and equipment shall report to the Department of Administration in March of 1988 on what percentage of their purchases were from businesses owned by minorities, disabled persons and women."

Four male minority business owners and one female minority business owner told the committee about their experiences in doing business with the State. Four of the business owners had experienced difficulty in trying to do business with the State; however, they all agreed that the State needed to establish more aggressive measures to aid disadvantaged business owners in getting State contracts.

Mr. Larry Bowman, M/WBE Coordinator for the City of Greensboro, spoke on his City's goals program. The City of Greensboro has a goal of 10%

MBE/WBE participation in the areas of procurement, construction, and professional services.

Ms. Judiann Tenney, Assistant Secretary of Commerce in the Women in Emerging Industries Division of the Department of Commerce, made comments at the third meeting. The Women in Emerging Industries Division is funded for one staff position and had no other budget support. The representative stated that she would like the General Assembly to appropriate more money so that her office could publish a Women Owned Business Directory.

The Staff also presented a summary of states that have state-wide goals or set-aside programs. The following states have some type of goals or set aside program for MBEs and/or WBEs: Arkansas, California, Connecticut, Florida, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Missouri, New Jersey, Ohio, Oklahoma, Rhode Island, South Carolina, Virginia, Washington, Wisconsin, and the District of Columbia.

#### **FOURTH MEETING**

The fourth meeting, on September 12, 1988, was held after the 1988 Legislative Short Session. The Committee heard from the two other purchasing agencies of the State--the Office of State Construction and the Office of State Property--regarding whether either agency had a special program for disadvantaged businesses and how many contracts have been awarded to those businesses over the past five years. The question of how many contracts have been awarded to MBEs, WBEs, and DBEs was posed to the Office of Purchase and Contract. The Committee discussed the issue of whether the program set up by Section 52 of House Bill 1514 could continue since the General Assembly had not appropriated money to continue the program during the Short Session. Finally, the committee heard recommendations for legislation from a representative from the North Carolina Association of Minority Business (NCAMB).

Mr. John Emerson, Office of State Construction, and Mr. Charles Holliday, Office of State Property, reported that they had no goals program for the award of contracts to MBEs, WBEs, or DBEs, but were open to suggestions on how they could do more business with those businesses. Both offices also reported that they do not keep records of how many contracts have been awarded to disadvantaged businesses.

Mr. Drew Harbinson said that information regarding the total number of contracts awarded disadvantaged businesses compared to total number of contracts awarded was not available. Mr. Harbinson attributed this to the following: (1) the State automation system was not originally designed to track the number of contracts awarded to minorities, women, and disabled persons; the purchasing system in most state departments is not automated; there are no clear standards in place for instances in which a vendor falls into two or more disadvantaged business categories; and to re program the automated systems currently used would be costly.



In addressing the issue of whether the Office of Purchase and Contract could continue to carry out the Program to Encourage Business Enterprises Owned by Minority, Women and Disabled Persons, the Committee reviewed House Bills 1514, Section 52 (Appendix D); House Bill 2641, Section 38 (Appendix F); and G.S. 143-16.3 (Appendix G). House Bill 1514 set up the program, and provided a \$50,000 appropriation for the 1987-88 fiscal year so that the Department of Administration could carry out certain functions. House Bill 2641, Section 38, provided that continuation of the program under House Bill 1514 for the 1988-89 fiscal year was contingent upon an appropriation by the General Assembly of an additional \$50,000. Since the General Assembly did not appropriate any money to continue the program, and the initial \$50,000 appropriated for the 1987-88 fiscal year was depleted, Mr. Drew Harbinson believed that there was a possibility that the Office of Purchase and Contract had no authority to continue to carry out the objectives of the program. The Office's authority was further called into question by G.S. 143-16.3, which prohibits a state agency from using funds from any source, except for gifts or grants, for a program for which the General Assembly has considered but not made an appropriation. The Committee advised the Office of Purchase and Contract to obtain an Attorney General's Opinion, but stated that it would support continuation of the program.

Furthermore, the Committee believed that since it was charged with the responsibility to report on existing programs and policies in all State governmental agencies as well as existing policies without programs for disadvantaged business enterprises, the information collected under House Bill 1514, Section 52, was necessary and vital to the performance of the Committee's function. Therefore, the Committee also believed that the Legislature did not intend to discredit the program.

As a result of the foregoing discussion by the committee, two motions were made and carried to: (1) send the Attorney General a resolution stating the committee's beliefs, and (2) request the Legislative Research Commission for a maximum of \$50,000 to continue to carry out the responsibilities assigned by House Bill 1514.

Mr. R.D. Locklear, a representative from the NCAMB, appeared at the fourth meeting and submitted to the Committee recommendations for legislation. The NCAMB recommended that the State: (1) establish separate goals for M/W/DBEs, (2) provide a breakdown of M/W/DBEs by defined groups to determine whether goals are being met in each separate group, (3) adopt specific standards for determining whether a bidder used good faith efforts to include a M/W/DBE subcontractor, (4) waive or reduce all or part of the State's bonding and/or insurance requirements for M/W/DBEs in certain circumstances, (5) allow a bidder to count its entire expenditure to a M/W/DBE manufacturer when the M/W/DBE is the actual manufacturer of the materials or supplies furnished for the work, (6) adopt a rule where a bidder could satisfy no more than 25% of the total M/W/DBE goal from an individual M/W/DBE, (7) make bidding information available and accessible to M/W/DBEs, (8) establish a "Small M/W/DBE Price Preference Program", (9) adopt specific criminal statutes relating to fraudulent certification as a M/W/DBE, and (10) expand the funding for the Minority Business Development Agency and the Division of Purchase and Contract.

## **FINAL MEETING**

The Committee's fifth and final meeting was held on November 14, 1988. The members discussed proposed recommendations and discussed the draft of the final report. The Committee approved the proposed final report as the Final Report to the Legislative Research Commission. The Committee approved recommendations to the Legislative Research Commission and the 1989 Session of the General Assembly.

## RECOMMENDATIONS

### RECOMMENDATION NUMBER 1

The Committee recommends that the following definitions be applied to this policy for citizens or lawful residents of the United States and North Carolina:

- 1) Disadvantaged Business Enterprise (DBE): any small, minority, physically handicapped, or women business enterprise.
- 2) Small Business Enterprise: a business in which gross annual sales total less than one million dollars (\$1,000,000) and employs less than twenty (20) full-time employees.
- 3) Minority Business Enterprise: a business which is owned or controlled by one or more socially or economically disadvantaged persons;
  - i) Socially disadvantaged persons: those persons who have been subjected to cultural, racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities;
  - ii) Economically disadvantaged persons: those persons whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities because of their identity as members of a group without regard to their individual qualities, as compared to others in the same line of business and competitive market area.
- 4) Physically Handicapped Business Enterprise: a business that is owned or controlled by one or more physically handicapped persons.
- 5) Women Business Enterprise: a business that is owned or controlled by one or more women.
- 6) Goal: a voluntary percentage or quantitative objective.

### RECOMMENDATION NUMBER 2

The Committee recommends that the State of North Carolina expand the existing State policy as set out in G.S. § 143-135.5 which is "to encourage and promote the use of small, minority, physically handicapped and women contractors in State construction projects," as relates to G.S. § 143-129 (procedure for letting of public contracts: purchases from federal government by State, counties, etc.) and G.S. § 143-131 (when counties, cities, towns and other subdivisions may let contracts on informal bids). Therein, the Committee further recommends that the State of North Carolina implement a program to actively seek and identify small, minority, physically handicapped, and women business enterprises as Disadvantaged Business Enterprises and offer to them the maximum opportunity to participate as providers of goods and services to the State of North Carolina.

The objectives of the program are recommended as follows:

1) To promote and provide disadvantaged business enterprise contractors equal opportunity for participating in State construction, contracting and procurement projects. This will include assistance in licensing and bonding where bonding is required.

2) To adopt procedures whereby the State can fulfill requirements to the federal government related to disadvantaged business enterprise participation in State construction, contracting and procurement programs.

3) To increase the State's knowledge of disadvantaged business enterprises and become familiar with their goods and services.

4) To develop a certification program, assist disadvantaged business enterprises in becoming certified and keeping such firms informed of procurement needs, purchasing procedures, and potential construction projects.

5) To sponsor seminars and training programs to assist disadvantaged business enterprises in becoming actively involved both in procurement and subcontracting in large contract projects.

6) To adopt procedures for monitoring compliance with the disadvantaged business enterprise programs for the resolution of complaints of discrimination against businesses holding construction or equipment/services contracts with the State.

### RECOMMENDATION NUMBER 3

The Committee recommends that the State of North Carolina shall take affirmative steps to ensure equal opportunity to contract with disadvantaged business enterprises (hereinafter referred to as DBEs) and to ensure that its contractors take similar action with DBEs. Those actions shall include matters in the following areas:

- 1) Preparation of bid packages
- 2) Advertising of construction bids
- 3) Future contract opportunity conference
- 4) DBE workshops
- 5) Communications programs for construction:
  - a) On-going communications programs
  - b) Communications relevant to specific construction projects
- 6) Other technical assistance
- 7) Pre-bid conference on construction contracts exceeding \$50,000
- 8) Provision for construction contracts \$50,000 and under
- 9) Payments

### RECOMMENDATION NUMBER 4

The Committee recommends that the State of North Carolina shall take affirmative steps to ensure equal opportunity for all DBEs to compete for all apparatus, supplies, materials or equipment. Those actions shall include those matters as follows:

- 1) Preparation of Bid Packages
- 2) Advertising for bids
- 3) DBE workshops
- 4) Communications program for procurement
- 5) Other technical assistance
- 6) Payments

#### RECOMMENDATION NUMBER 5

The Committee recommends that appropriate State departments shall forward to the DBE program office a complete description of all projects planned for the year which would require a consultative or otherwise professional services. The DBE Program Office shall supply the departments with current listings profiling those DBEs which specialize in areas of service needed by the State. For those projects which are developed after the annual budget is approved, a complete description of such projects shall be forwarded to the DBE office. Monitoring of program compliance shall be a joint activity conducted by the appropriate departments and the DBE office.

#### RECOMMENDATION NUMBER 6

The Committee recommends that the contractors take affirmative steps prior to submission of bids to encourage participation in projects by subcontractor DBEs, and there be joint responsibilities between the State and the contractor for such affirmative steps. This includes:

- 1) Segmenting total work requirements to permit maximum DBE participation.
- 2) Assuring that DBEs are solicited whenever they are potential sources of goods or services.
- 3) Attending pre-bid conferences.
- 4) Advertising in small, minority, physically handicapped and women owned media, trade publications and other media formatted towards DBEs within a reasonable time prior to bid submission. The publication should be one which reasonably covers the area of the project. The advertisement should be for specific subcontracts described in reasonable detail.
- 5) Assisting DBEs in securing bonding and insurance as required in order to perform State contracts.

#### RECOMMENDATION NUMBER 7

The Committee recommends that DBE firms be responsible for self-promotion as it pertains to consideration in the contracting process. In addition to self-promotion, the following steps are suggested:

- 1) Submit information to the contract recipients to identify firm status as that of a small, minority, physically handicapped or women business enterprise.
- 2) Firms should become certified as DBEs under State procedures as established by the appropriate State agency.
- 3) Contact federal, state and local DBE liaison offices and directories to obtain information on potential jobs.
- 4) Provide capability statements to state agencies, consulting engineers, and subcontractors stating types of work performed by the firm, size of job that the firm could handle, bonding information, and any special skills.



5) Make every effort to establish contacts and relationships with contractors for potential future business, including attending pre-bid conferences and subscribing to industry and trade journals.

6) Respond promptly to solicitation requests.

#### RECOMMENDATION NUMBER 8

The Committee recommends that the calculation of goals for DBE participation in contracts awarded shall be as follows:

1) Once a firm is determined to be an eligible small, minority, physically handicapped and women business enterprise in accordance with the DBE plan, a total dollar value of the contract awarded to the DBE is counted as participation.

2) The total dollar of a contract to a DBE owned and controlled by a business enterprise that qualifies under more than one category of DBEs is counted as participation for each category respectively, in proportion to the percentage of ownership and control of each business. As an example, the total dollar value of a DBE owned and controlled by minority women is counted as either the minorities' or women's participation, but not for both. The DBE will be categorized according to which will be the most beneficial for the individual business enterprise.

3) The State may count as its DBE participation a portion of the total dollar value of a contract with a joint venture eligible under the standards of the DBE plan equal to the percentage of the ownership and control of the DBE partner in the joint venture.

4) The State may count as its DBE participation only expenditures to DBEs that perform a significant function in the work of a contract. A DBE is considered to perform a significant function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing, and supervising the work involved. To determine whether a DBE is performing a significant function, the State will take into account the amount of work subcontracted, industry practices, and other relevant factors.

5) Consistent with normal industry practices, a DBE may enter into subcontracts. If a DBE contractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the DBE will be presumed not to be performing a significant function. The DBE may present evidence to rebut this presumption to the State.

#### RECOMMENDATION NUMBER 9

The Committee recommends that one of the following models be adopted for promoting disadvantaged business enterprises and providing DBEs equal opportunity to participate in State construction, contracting and procurement programs:

1) A model formula be devised to equitably distribute participation by DBEs in State construction, contracting and procurement projects; or

2) The following goals for DBE participation in construction projects, procurement participation, and professional and consulting contracts, and for DBE sales in commodities and products for fiscal year 1989 - 1990 be:

Construction Participation/Percent

|                |    |
|----------------|----|
| Small business | -- |
| Minority       | 10 |
| Women          | 2  |
| Handicapped    | -- |

State Procurements Participation/Percent

|                |    |
|----------------|----|
| Small business | -- |
| Minority       | 10 |
| Women          | 10 |
| Handicapped    | -- |

Professional & Consulting Services Participation/Percent

|                |    |
|----------------|----|
| Small business | -- |
| Minority       | 10 |
| Women          | 2  |
| Handicapped    | -- |

RECOMMENDATION NUMBER 10

The Committee recommends that good faith efforts shall be made to comply with the State policy and all good faith efforts shall be documented. Any noncompliance with the State policy shall be heard through a Grievance Procedure.

RECOMMENDATION NUMBER 11

The Committee recommends that language be included in the enabling legislation that will allow for preemption of local ordinances which do not exceed minimums as by the State policy such as the following:

"To the extent of any conflict with the Act, this Act will prevail over all state or local laws which do not meet or exceed the goals of disadvantaged business enterprise participation as set forth pursuant to this Act; however, this Act will not apply to any contract already entered into prior to its enactment."

RECOMMENDATION NUMBER 12

The Committee recommends that the following language be included in the enabling legislation to deter any falsification of classification:

"Where the appropriate State agency or department determines that a business has been classified as a small, minority, physically handicapped or women business enterprise on the basis of false information knowingly supplied by the business and has been awarded a contract to which it would not otherwise have been entitled under this Act, the appropriate State agency or department responsible for the contract shall:

(1) Assess the business any difference between the contract amount and what the State's cost would have been if the contract had not been awarded in accordance with the provisions of this Act;

(2) In addition to the amount due under subsection (1), assess the business a penalty in an amount of not more than 10 percent of the amount of the contract involved;

(3) Order the business ineligible to transact any business with the State for a period of not less than three months and not more than 24 months; and

(4) Prior to any final determination, assessment or order under this section, afford the business an opportunity for a contested case hearing pursuant to G.S. 150B-22 through 150B-38.

All payments to the State pursuant to subsection (1) of this section shall be deposited in the fund out of which the contract involved was awarded. All payments to the State pursuant to subsection (2) of this section shall be deposited in the General Fund."

### RECOMMENDATION NUMBER 13

The Committee recommends that the following language be included in the enabling legislation to deter any fraudulent representation as a disadvantaged business enterprise:

"(a) If any person shall, with intent to cheat or defraud another, represent himself as a disadvantaged business enterprise without having been designated as such under G.S. \_\_\_\_\_, for the purpose of obtaining from any person within this State any money, goods, property, services, chose in action, or other thing of value, such person shall be guilty of a felony, and shall be punished as a Class J felon.

(b) For purposes of this section, 'person' means person, association, consortium, corporation, body politic, partnership, or other group, entity or organization."



## APPENDIX A

### MEMBERSHIP OF LRC COMMITTEE ON DISADVANTAGED BUSINESS CONTRACTS FINANCED BY STATE FUNDS

#### **Pres. Pro Tem's Appointments**

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Sen. Daniel R. Simpson  
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**Clerk:** Ms. Ada Edwards  
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**LRC Member:** Rep. John T. Church

#### **Speaker's Appointments**

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2715 Columbia Drive  
Wilmington, NC 28403  
(919) 762-8222

Rep. Thomas C. Hardaway  
Post Office Box 155  
Enfield, NC 27823  
(919) 445-2371

Rep. Joe B. Raynor  
345 Winslow Street  
Fayetteville, NC 28301  
(919) 483-8711



## APPENDIX B

### SPEAKERS WHO APPEARED BEFORE THE COMMITTEE ON DISADVANTAGED BUSINESS CONTRACTS FINANCED BY STATE FUNDS

|                           |   |
|---------------------------|---|
| Mr. Drew Harbinson        | Office of Purchase and Contract         |
| Mr. Lewis Myers           | Commerce for Small Business Development |
| Mr. James K. Polk         | Governor's Director of Minority Affairs |
| Mr. Max Baldwin           | Division of Purchase and Contract       |
| Mr. Walter Brown          | NC DOT, Civil Rights Section            |
| Mr. Bill Benton           | NC DOT, Deputy Purchasing Officer       |
| Ms. Elizabeth Mills       | M/WBE Director, City of Charlotte       |
| Ms. Pat Griggs            | M/WBE Coordinator, Mecklenburg County   |
| Ms. Patricia Melvin       | M/WBE Director, New Hanover County      |
| Mr. Jerry Grady           | M/WBE Supervisor, City of Raleigh       |
| Ms. Sharon Winstead Scott | M/WBE Representative, City of Durham    |
| Mr. Henry Clegg           | NC Association of General Contractors   |
| Mr. Rick Carlyle          | Rural Economic Development Center       |
| Mr. Larry Bowman          | M/WBE Coordinator - City of Greensboro  |
| Ms. Juliann Tenney        | NC Department of Commerce               |
| Mr. John Emerson          | Office of State Construction            |
| Mr. Charles Holliday      | Office of State Property                |
| Mr. R. D. Locklear        | NC Association of Minority Businesses   |



## APPENDIX C

### GENERAL ASSEMBLY OF NORTH CAROLINA 1987 SESSION RATIFIED BILL

#### CHAPTER 873 HOUSE BILL 1

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE AND CONTINUE VARIOUS COMMITTEES AND COMMISSIONS, TO MAKE APPROPRIATIONS THEREFOR, AND TO AMEND STATUTORY LAW.

The General Assembly of North Carolina enacts:

#### PART I. TITLE

Section 1. This act shall be known as "The Study Commissions and Committees Act of 1987."

. . .

#### PART II.-----LEGISLATIVE RESEARCH COMMISSION

Sec. 2.1. The Legislative Research Commission may study the topics listed below. Listed with each topic is the 1987 bill or resolution that originally proposed the issue or study and the name of the sponsor. The Commission may consider the original bill or resolution in determining the nature, scope and aspects of the study. The topics are:

- (32) Disadvantaged Business Contracts Financed by State Funds (H.B. 2130-Hardaway).

Sec. 2.6. Reporting Dates. For each of the topics the Legislative Research Commission decides to study under this act or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation to the 1989 General Assembly.

Sec. 2.7. Bills and Resolution References. The listing of the original bill or resolution in this Part is for reference purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

. . .

-----EFFECTIVE DATE

Sec. 31. This act is effective on July 1, 1987.

## GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1987

H

1

## HOUSE BILL 2130

Short Title: LRC Study/Minority Contracts.

(Public)

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Sponsors: Representatives Hardaway; Barnhill, Blue, Burke, Cunningham, Edwards, Fitch, Fletcher, Freeman, Gist, Hall, Hightower, S. Hunt, Jeralds, Kennedy, Locks, Mavretic, Michaux, S. Thompson, Wicker.

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Referred to: Appropriations.

May 29, 1987

## A BILL TO BE ENTITLED

1  
2 AN ACT TO APPROPRIATE FUNDS FOR A LEGISLATIVE RESEARCH  
3 COMMISSION STUDY ON PARTICIPATION BY DISADVANTAGED  
4 BUSINESS ENTERPRISES IN THE PERFORMANCE OF CONTRACTS  
5 FINANCED IN WHOLE OR IN PART WITH STATE FUNDS.

6 The General Assembly of North Carolina enacts:

7       Section 1. The Legislative Research Commission is authorized to  
8 recommend a comprehensive policy for North Carolina and its political subdivisions  
9 to promote the maximum opportunity for participation by disadvantaged business  
10 enterprises in the performance of contracts financed in whole or in part with State  
11 funds. The Commission shall also report on existing programs and policies in all  
12 State governmental agencies as well as existing policies without programs for  
13 minorities and disadvantaged business enterprises.

14       Sec. 2. There is appropriated from the General Fund to the General  
15 Assembly the sum of ten thousand dollars (\$10,000) for the 1987-88 fiscal year for the  
16 study authorized by this act.

17       Sec. 3. This act shall become effective July 1, 1987.





GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1987

H

1

HOUSE BILL 2131

Short Title: LRC Study/Minority Contracts.

(Public)

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Sponsors: Representative Hardaway.

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Referred to: Appropriations.

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May 29, 1987

1 A BILL TO BE ENTITLED  
2 AN ACT TO APPROPRIATE FUNDS FOR A LEGISLATIVE RESEARCH  
3 COMMISSION STUDY ON STATE CONTRACTS WITH SMALL  
4 BUSINESSES, ESPECIALLY BUSINESSES OWNED BY MINORITIES,  
5 DISABLED PERSONS, AND WOMEN.

6 The General Assembly of North Carolina enacts:

7 Section 1. The Legislative Research Commission is authorized to the  
8 study the issue of State contracts with small businesses, especially businesses owned  
9 by minorities, disabled persons, and women. The study shall include a survey on the  
10 amount of goods and services the State is currently acquiring from these businesses,  
11 an analysis of what is currently being done to assist these businesses in getting State  
12 contracts, and recommendations on what the State should be doing to assist these  
13 businesses in doing business with the State.

14 Sec. 2. There is appropriated from the General Fund to the General  
15 Assembly the sum of ten thousand dollars (\$10,000) for the 1987-88 fiscal year for the  
16 study authorized by this act.

17 Sec. 3. This act shall become effective July 1, 1987.



## APPENDIX D

HOUSE BILL 1514

Requested by: Rep. Bob Etheridge

### -----SMALL BUSINESSES/STATE CONTRACTS

Sec. 52. (a) Of the funds appropriated in a reserve to the Office of State Budget and Management in Section 2 of this act, the sum of fifty thousand dollars (\$50,000) for the 1987-88 fiscal year shall be used by the Department to:

(1) identify small businesses, especially those owned by minorities, disabled persons, and women, that could do business with the State, and to provide pre- and post-bid information and assistance to these businesses on how to do business with the State;

(2) publish and distribute to State purchasers a directory of small business enterprises, especially those owned by minorities, disabled persons, and women; and

(3) establish a system to monitor, record, and measure the use of small businesses, especially those owned by minorities, disabled persons, and women, by the State.

(b) The General Assembly urges all subdivisions and agencies of the State, all local governments, and all other entities, authorized to use the services of the Department of Administration in the purchase of materials, supplies, and equipment, (i) to participate in a Program to Encourage Business Enterprises Owned by Minority, Women and Disabled Persons, and (ii) to purchase a minimum of four percent (4%) of their contract purchases from businesses owned by minorities, disabled persons, and women, provided that the purchases comply with the policy set forth in G.S. 143-48.

All participating entities required to use the services of the Department of Administration in the purchase of materials, supplies, and equipment shall report to the Department of Administration in March of 1988 on what percentage of their contract purchases were from businesses owned by minorities, disabled persons, and women.



# State of North Carolina



JAMES G. MARTIN  
GOVERNOR

## EXECUTIVE ORDER NO. 34

### GOVERNOR'S PROGRAM TO ENCOURAGE BUSINESS ENTERPRISES OWNED BY MINORITY, WOMEN AND DISABLED PERSONS

It is my policy that the State of North Carolina shall enhance and promote economic opportunities for all of its citizens without regard to race, gender or handicap.

Therefore, by the authority vested in me as Governor by the Constitution and laws of North Carolina, it is ORDERED:

#### Section 1. Establishment

(A) There is hereby established the Governor's Program to Encourage Business Enterprises Owned by Minority, Women and Disabled Persons.

(B) The Program shall be coordinated by the Governor's Director of Minority Affairs and administered by the Division of Purchase and Contract of the Department of Administration.

(C) The purposes of the Program are to enhance and promote economic opportunities for all of its citizens without regard to race, gender or handicap by:

- (1) increasing the amount of goods and services acquired by the State from businesses owned by minorities, women and disabled persons;
- (2) ensuring the absence of barriers that reduce participation of minorities, women and disabled persons in the State's purchasing process;
- (3) encouraging the State's purchasing officers to identify prospective minorities, women and disabled vendors and service providers;
- (4) promoting awareness among minorities, women and disabled persons of opportunities to do business with State government.

(D) The Program objective for fiscal 1986-87 is for businesses owned by minorities, women and disabled persons to receive a minimum of four percent of the State's contract purchases. By order of the Governor, this percentage may be increased on an annual basis.

## Section 2. Administration

(A) The Secretary of Administration shall provide assistance on a project basis to the Director of Minority Affairs.

(B) The Division of Purchase and Contract, Department of Administration shall assist each department in developing a plan and provide technical assistance to reach the set objectives.

(C) Each Department Head shall designate from the existing purchasing staff of such Department a coordinator for the

Program. The name of said designee shall be forwarded to the Director of Minority Affairs.

(D) The Minority Business Development Agency, Small Business Division of the Department of Commerce shall continue to certify that business enterprises owned by minorities, women and disabled persons are in fact owned by those classified entrepreneurs. This agency shall also provide technical assistance to businesses interested in the Program.

(E) The Division of Purchase and Contract shall prepare and make available a directory of business enterprises owned by minorities, women and disabled persons firms to departmental personnel to facilitate the accomplishment of the Program.

### Section 3. Reporting and Evaluation

(A) The Director of Minority Affairs shall monitor and evaluate the Program and report on a quarterly basis to Department Heads. The Director shall also conduct review meetings with all coordinating agencies and Department Heads on an as needed basis.

(B) The Division of Purchase and Contract shall report purchases and contract opportunities and purchase and contract awards on a monthly basis to the Director of Minority Affairs.


### Section 4. Prior Orders


All prior Executive Orders or portions of prior Executive



Orders inconsistent herewith are hereby repealed.

This Order is effective the 27<sup>th</sup> day of February,  
1987.

  
James G. Martin  
Governor

  
Thad Eure, Secretary of State  
State of North Carolina





Appointments by the General Assembly shall be made in accordance with G.S. 120-121, and vacancies in those appointments shall be filled in accordance with G.S. 120-122.

(f) Among other duties, the Policy Board shall: (i) approve the appointment of a Director and set his or her employment conditions; (ii) approve the specifications of the supercomputer and the recommendation of a successful bidder that will be chosen according to the procurement procedures of the Division of Purchase and Contract in the Department of Administration; (iii) formulate and approve the budget and operating policies of the supercomputer center; (iv) approve the purposes of the supercomputer center; and (v) serve generally as the governing board of the supercomputer center.

(g) This section is effective upon ratification.

Requested by: Representatives Bob Etheridge and Hardaway

-----CONTINUE PROGRAM TO ENCOURAGE STATE PURCHASES FROM MINORITY BUSINESSES

Sec. 38. Section 52 of Chapter 738 of the 1987 Session Laws reads as rewritten:

"Sec. 52. (a) Of the funds appropriated in a reserve to the Office of State Budget and Management in Section 2 of this act, the sum of fifty thousand dollars (\$50,000) for the 1987-88 fiscal year, and an additional sum of fifty thousand dollars (\$50,000) for the 1988-89 fiscal year if appropriated by the General Assembly, shall be used by the Department to:

- (1) Identify small businesses, especially those owned by minorities, disabled persons, and women, that could do business with the State, and to provide pre- and post-bid information and assistance to these businesses on how to do business with the State;
- (2) Publish and distribute to State purchasers a directory of small business enterprises, especially those owned by minorities, disabled persons, and women; and
- (3) Establish a system to monitor, record, and measure the use of small businesses, especially those owned by minorities, disabled persons, and women, by the State.

(b) The General Assembly urges all subdivisions and agencies of the State, all local governments, and all other entities, authorized to use the services of the Department of Administration in the purchase of materials, supplies, and equipment, (i) to participate in a Program to Encourage Business Enterprises Owned by Minority, Women and Disabled Persons, and (ii) to purchase a minimum of four percent (4%) of their contract purchases from businesses owned by minorities, disabled persons, and women, provided that the purchases comply with the policy set forth in G.S. 143-48.

All participating entities required to use the services of the Department of Administration in the purchase of materials, supplies, and equipment shall report to the Department of Administration in March of 1988 and in March of 1989 on what percentage of their contract purchases were from businesses owned by minorities, disabled persons, and women, and what percentage of the contract bids for such purchases were from businesses owned by such persons. The Department of Administration shall provide the reports to the House and Senate Base Budget Appropriations Committees on General Government in April of 1989.

For the purpose of this section, whenever it is specified that a business must be owned by minorities, disabled persons, and women, it means such persons who are also either United States Citizens or United States Nationals."



§ 143-16.3

CH. 143. STATE DEPARTMENTS, ETC.

§ 143-18

**§ 143-16.3. No expenditures for purposes for which the General Assembly has considered but not enacted an appropriation.**

No funds from any source, except for gifts and grants, may be expended for any purpose for which the General Assembly has considered but not enacted an appropriation of funds for the current fiscal period. For the purpose of this section, the General Assembly has considered a purpose when that purpose is included in a bill or petition or when any committee of the Senate or the House of Representatives deliberates on that purpose. (1985 (Reg. Sess., 1986), c. 1014, s. 177.)

**Editor's Note.** — Section 177(b) of Session Laws 1985 (Reg. Sess., 1986), c. 1014, makes this section effective July 15, 1986.

Session Laws 1985 (Reg. Sess., 1986), c. 1014, s. 243, is a severability clause.

**§ 143-17. Requisition for allotment.**

Before an appropriation of any spending agency shall become available, such agency shall submit to the Director, not less than 20 days before the beginning of each quarter of each fiscal year a requisition for an allotment of the amount estimated to be required to carry on the work of the agency during the ensuing quarter and such requisition shall contain such details of proposed expenditures as may be required by the Director. The Director shall approve such allotments, or modifications of them, as he may deem necessary to make, and he shall submit the same to the State Controller who in the course of his operations shall check for compliance with such allotments. No allotment shall be changed nor shall transfers be made except upon the written request of the responsible head of the spending agency and by approval of the Director of the Budget in writing: Provided, that quarterly allotments made to the State Auditor's office, State Treasurer's office, and Administrative Office of the Courts shall be in such amounts as may be designated by the Advisory Budget Commission, and shall be made available in accordance with procedures determined by the Advisory Budget Commission. (1925, c. 89, s. 18; 1929, c. 100, s. 19; 1955, c. 578, s. 4; 1981, c. 859, s. 47.1; 1985 (Reg. Sess., 1986), c. 1024, s. 14.)

**Effect of Amendments.** — The 1985 (Reg. Sess., 1986) amendment, effective August 1, 1986, substituted "State Controller who in the course of his opera-

tions" for "State Auditor who in the course of his audit" in the second sentence.

**§ 143-18. Unencumbered balances to revert to treasury; capital appropriations excepted.**

All unencumbered balances of maintenance appropriations shall revert to the State treasury to the credit of the general fund or special funds from which the appropriation and/or appropriations, were made and/or expended, at the end of each fiscal year; except that capital expenditures for the purchase of land, the erection of buildings, new construction or renovations in progress shall con-





Carolina to be administered by the State Education Assistance Authority, under such rules and regulations as the State Education Assistance Authority may require including all loans or scholarships repaid to the State pursuant to law. The

transfer from the Office of Budget and Management to The University of North Carolina, State Education Assistance Authority, has all the elements of a Type I transfer as defined in G.S. 143A-6(a)."

### ARTICLE 3.

#### *Purchases and Contracts.*

#### **§ 143-48. State policy; cooperation in promoting the use of small, minority, physically handicapped and women contractors; purpose.**

It is the policy of this State to encourage and promote the use of small, minority, physically handicapped and women contractors in State purchasing of goods and services. All State agencies, institutions and political subdivisions shall cooperate with the Department of Administration and all other State agencies, institutions and political subdivisions in efforts to encourage the use of small, minority, physically handicapped and women contractors in achieving the purpose of this Article, which is to provide for the effective and economical acquisition, management and disposition of goods and services by and through the Department of Administration. (1931, c. 261, s. 1; c. 396; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46; 1983, c. 692, s. 2.)

**Editor's Note.** — Session Laws 1975, 2nd Sess., c. 983, s. 122, provides: "Each State department, institution, or agency shall make every reasonable effort to assure that purchase orders will be limited to goods necessary to operate in the fiscal year in which the appropriation for such purchase is authorized. Each State department, institution, or agency shall furnish the State Auditor and Department of Administration, by July 31 of each year, a statement of all obligations outstanding at the end of the previous fiscal year."

Session Laws 1985, c. 24, s. 1, effective March 22, 1985, and applicable only to

contracts entered into after that date but before March 1, 1987, as amended by Session Laws 1985, c. 38, s. 1, effective March 28, 1985, provides: "G.S. 143-129 and Article 3 of Chapter 143 of the General Statutes do not apply to contracts for equipment, supplies, and services related to the establishment and operation of computer and information processing systems for the General Assembly."

#### **State Government Reorganization.**

— The Purchase and Contract Division remains in the Department of Administration under § 143B-368, enacted by Session Laws 1975, c. 879, which repealed former § 143A-82.

#### **§ 143-49. Powers and duties of Secretary.**

The Secretary of Administration shall have power and authority, and it shall be his duty, subject to the provisions of this Article:

- (1) To canvass sources of supply, and to purchase or to contract for the purchase, lease and lease-purchase of all supplies, materials, equipment and other tangible personal property required by the State government, or any of its departments, institutions or agencies under competitive bidding or otherwise as hereinafter provided.







